

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 488 OF 2007

Ashok Bhau Jadhav Petitioner

versus

Nav Maharashtra Shikshan
Prasarak Mandal & ors Respondent.

Shri D.S. Sakhalakar for the petitioner
Shri Jagdish Chaudhari h/f S.P.Kadam for Respondent
nos. 1 to 3.
Shri S.K.Chinchalikar AGP for Respondent nos.4 to 6.

CORAM; A.P. DESHPANDE, J.
DATED; 16TH JULY, 2007

P.C.:

1. The present respondent is the original plaintiff who by filing a suit objected to the transfer of the school from one place to another, which is being administered and managed by the present petitioner, which happens to be a public trust. A suit for declaration and injunction has been filed. The present petitioner has opposed the prayer made in the suit by filing the written statement. He also moved an application for framing of preliminary issue under section 9-A of Civil Procedure Code. The rejection of the said application by the trial court has given rise to the filing of the present writ petition. The objection raised by the petitioner to the maintainability of the suit is touching the provision

of sections 50 and 51 of the Bombay Public Trust Act. The objection of the petitioner is to the effect that unless and until the requirement of sections 50 and 51 is complied with, the suit would not be maintainable. The trial court has found that the question of maintainability of a suit touching the provisions of sections 50 and 51 is a mixed question of fact and law and hence can only be adjudicated after parties lead evidence in support of their respective contentions.

2. Perused the order. It does not call for any interference, more so in exercise of writ jurisdiction. In the result, the petition fails and is summarily dismissed.

3. It is made clear that the issue in regard to the jurisdiction of the civil court and the maintainability of the suit under sections 50 and 51 shall be tried along with other issues. All contentions raised in this writ petition are kept open for being adjudicated by the trial court.

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